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09/975,766	10/10/2001	Tsuyoshi Sakata	4777/4	9495

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EXAMINER

SHEPARD, JUSTIN E

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/975,766	<b>Applicant(s)</b> SAKATA ET AL.	
	<b>Examiner</b> Justin E. Shepard	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-10, 12, 13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Hendricks.

Referring to claim 1, Chernock discloses a terminal condition control method comprising a plurality of terminals and a server apparatus controlling conditions of the terminals, wherein: the terminals are connected to the server apparatus through a communication line (figures 1 and 2) and transmit information indicating the conditions of the terminals (column 6, lines 48-49), the server apparatus statistically processes the attained conditions of the terminals (column 4, lines 56-57; column 12, lines 19-22), the plurality of terminals have timings of informing the server apparatus of the condition determined for the respective terminals (column 12, lines 30-31 and 34-36).

Chernock does not disclose a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions

of the terminals to the server so that said next timings are distributed within a predetermined period.

Hendricks discloses a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period (column 14, lines 13-17).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the scheduling of the polling, as taught by Hendricks, in the method disclosed by Chernock. The motivation would have been to enable certain groups to send their requests at the same time as Chernock discloses aggregating requests from the same geographic area (Chernock: column 12, lines 19-22).

Referring to claim 2, Chernock does not disclose a terminal condition control method according to claim 1, wherein the distribution of the condition information timings for the plurality of terminals is set within a month by date assignment.

At the time of the invention it would have been obvious for one of ordinary skill in the art to set the predetermined timing period to be within a month. The motivation would be that if set over a month period, so that updating a large group would not overwhelm the system.

Referring to claim 3, Chernock discloses a terminal condition control method according to claim 1 or 2, wherein the distribution of the condition informing timings for the plurality of terminals can be changed (column 12, lines 13-14).

Referring to claim 4, Chernock discloses a terminal condition control method according to claim 2, wherein in the distribution of the condition informing for the plurality of terminals, the date assignment is performed such that users assigned on the same date as the condition informing timings of the terminals are uniformly distributed in accordance with at least one of items including age, sex, viewing inclination, hobby, occupation, and address (column 5, lines 44-46; Note: demographics is interpreted as encompassing many of the limitations including age, sex, hobby, and occupation).

Referring to claim 5, Chernock discloses a server apparatus comprising: communication means capable of being connected with a plurality of terminals through a communication line (figures 1 and 2); receiving means for receiving condition information from the terminals (column 6, lines 48-49); terminal information analyzing means for analyzing the received condition information (column 6, line 50); and communication controlling means for controlling communication operation performed by the communication means, wherein regarding the plurality of terminals, the communication controlling means defines timings of transmitting conditions of the terminals to the server apparatus for the terminals (column 12, lines 19-22, 30-31, and 34-46).

Chernock does not disclose a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period.

Hendricks discloses a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period (column 14, lines 13-17).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the scheduling of the polling, as taught by Hendricks, in the method disclosed by Chernock. The motivation would have been to enable certain groups to send their requests at the same time as Chernock discloses aggregating requests from the same geographic area (Chernock: column 12, lines 19-22).

Referring to claim 7, Chernock discloses a server apparatus comprising: a condition information receiving section for receiving from a plurality of terminals condition information indicating conditions of the plurality of terminals each having a receiving section for receiving broadcasting (column 6, lines 48-49).

Chernock also discloses statistics generation for quality control (column 4, lines 56-57).

Chernock does not disclose an apparatus where a statistic processing section for statistically processing a plurality of condition information received by the condition information receiving sections.

At the time of the invention it would have been obvious for one of ordinary skill in the art to use include the storage information in the quality control statistics. The motivation would be that knowing the amount of free storage on the terminals would factor into the ability to download new software onto the terminals.

Chernock also does not disclose a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period.

Hendricks discloses a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period (column 14, lines 13-17).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the scheduling of the polling, as taught by Hendricks, in the method disclosed by Chernock. The motivation would have been to enable certain groups to send their requests at the same time as Chernock discloses aggregating requests from the same geographic area (Chernock: column 12, lines 19-22).

Referring to claim 8, Chernock discloses a server apparatus according to claim 7, further comprising: an operation condition maintaining section for maintaining an operation condition, associated with a predetermined operation, which is for executing the associated predetermined operation; an operation controlling section for controlling the predetermined operation (column 5, lines 27-28); a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the operation condition maintained by the operation condition maintaining section (column 5, lines 39-42); and an operation executing section, when the determining section determines an operation condition is satisfied, fetching a

predetermined operation, which is associated with the satisfied operation condition, and executing the fetched predetermined operation (column 5, lines 38-46).

Referring to claim 9, Chernock discloses a server apparatus according to claim 7, wherein the condition information includes information indicating success/failure of downloading of a software from a broadcasting station to the terminals (column 8, lines 51-54), and the statistic processing section calculates a rate of success/failure of downloading of software from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 10, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating success/failure of downloading of software from a broadcasting station to the terminals (column 8, lines 51-54) and information concerning attributes of the terminals (column 6, lines 48-49), and the statistic processing section calculates a rate of success/failure of downloading of software for each of the attributes from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 12, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating use of a specific function in the terminals (column 6, lines 48-49; Note: the state of storage is being interpreted as a specific function), and the statistic processing section calculates using a rate of the specific function from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 13, Chernock discloses a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating whether or not the terminals are being connected to the server apparatus (column 12, lines 13-14; Note: not receiving a transmission is interpreted as being an indicator that the terminal was disconnected from the network), and the statistic processing section calculates connection condition of the terminals from the plurality of condition information received by the condition information receiving section (column 4, lines 56-57).

Referring to claim 17, Chernock discloses a terminal comprising a transmitting section for transmitting condition information to be statistically processed by the server apparatus according to claim 7 or 8 (column 6, lines 48-49).

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Hendricks.

Referring to claim 18, Herz discloses a terminal condition control method comprising: a condition information receiving step of receiving from a plurality of terminal condition information indicating conditions of the plurality of terminals each having a receiving section for receiving broadcasting (column 6, lines 39-41 and 64-65); and a statistic processing step of statistically processing a plurality of condition information received in the condition information receiving step (column 4, lines 31-34).

Herz does not disclose a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions

of the terminals to the server so that said next timings are distributed within a predetermined period.

Hendricks discloses a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period (column 14, lines 13-17).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the scheduling of the polling, as taught by Hendricks, in the method disclosed by Herz. The motivation would have been to enable certain groups to send their requests at the same time from the same geographic area.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Hendricks in view of Reilly.

Referring to claim 6, Chernock discloses a terminal comprising: communication means capable of being connected with a server apparatus through a communication line (figures 1 and 2); and condition information generation means for generating condition information including downloading information of a software about the terminal (column 6, lines 48-49); wherein the terminal is connected to the server apparatus by the communication line to transmit the condition information to the server apparatus (figures 1 and 2).

Chernock does not disclose a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions

of the terminals to the server so that said next timings are distributed within a predetermined period.

Hendricks discloses a method where said server apparatus sets the next timings for the respective terminals to transmit the information indicating the conditions of the terminals to the server so that said next timings are distributed within a predetermined period (column 14, lines 13-17).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the scheduling of the polling, as taught by Hendricks, in the method disclosed by Chernock. The motivation would have been to enable certain groups to send their requests at the same time as Chernock discloses aggregating requests from the same geographic area (Chernock: column 12, lines 19-22).

Chernock and Hendricks do not disclose an apparatus where the terminal receives instruction from the server apparatus to set its own condition information transmitting timing.

Reilly discloses an apparatus where the terminal receives instruction from the server apparatus to set its own condition information transmitting timing (column 14, lines 44-47).

At the time of the invention it would have been obvious for one of ordinary skill in the art to allow the terminals to set their own download times, as taught by Reilly, in the system disclosed in Chernock. The motivation would have been to allow for the user to plan for a planned outage, such as shutting the power off for a substantial amount of time.

Claims 11, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Hendricks as applied to claim 7 above, and further in view of Herz.

Referring to claim 11, Chernock and Hendricks do not disclose a server apparatus according to claim 7 or 8, wherein the condition information includes information indicating viewing of a specific program in the terminals, and the statistic processing section calculates an audience rating of the specific program from the plurality of condition information received by the condition information receiving section.

Herz discloses a server apparatus, wherein the condition information includes information indicating viewing of a specific program in the terminals (column 6, lines 39-41), and the statistic processing section calculates an audience rating of the specific program from the plurality of condition information received by the condition information receiving section (column 4, lines 31-34).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the dynamic viewer preferences taught by Herz, in the system disclosed by Chernock and Hendricks. The motivation for combining these two references would have been to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

Referring to claim 15, Chernock and Hendricks do not disclose a server apparatus according to claim 11, further comprising an advertising rate calculating

section for calculating an advertising rate of a specific program with use of the audience rating calculated by the statistic processing section as a parameter.

Herz discloses a server apparatus according to claim 11, further comprising an advertising rate calculating section for calculating an advertising rate of a specific program with use of the audience rating calculated by the statistic processing section as a parameter (column 48, lines 42-45).

At the time of the invention it would have been obvious for one of ordinary skill in the art to rate the commercials as taught by Herz in the system disclosed by Chernock and Hendricks. The motivation for combining these two references would have been to have the system be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

Referring to claim 16, Chernock and Hendricks do not disclose a server apparatus according to claim 11, further comprising a program editing information generating section for generating program editing information in accordance with the audience rating.

Herz discloses a server apparatus according to claim 11, further comprising a program editing information generating section for generating program editing information (column 4, lines 31-34; Note creating a channel made of programs that the subscriber watches is interpreted as editing information) in accordance with the audience rating (column 48, lines 42-45).

At the time of the invention it would have been obvious for one of ordinary skill in the art to rate the commercials as taught by Herz in the system disclosed by Chernock

and Hendricks. The motivation for combining these two references would have been to have the system be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chernock in view of Hendricks as applied to claim 9 above, and further in view of Casagrande.

Referring to claim 14, Chernock discloses an operation executing section for taking out the downloading stopping operation maintained by the operation condition maintaining section to execute the operation when the downloading stopping condition is met in the determining section (column 12, lines 19-22, 30-31, and 34-36).

Chernock and Hendricks do not disclose a server apparatus according to claim 9, further comprising: an operation condition maintaining section for maintaining a downloading stopping condition having a predetermined rate of success/failure of downloading of software; an operation controlling section for controlling an operation for stopping the downloading of software; a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the downloading stopping condition maintained by the operation condition maintaining section.

Casagrande discloses a server apparatus according to claim 9, further comprising: an operation condition maintaining section for maintaining a downloading stopping condition having a predetermined rate of success/failure of downloading of

software; an operation controlling section for controlling an operation for stopping the downloading of software; a determining section for determining whether or not the result of the statistic process by the statistic processing section meets the downloading stopping condition maintained by the operation condition maintaining section (column 2, lines 54-57).

At the time of the invention it would have been obvious for one of ordinary skill in the art to attempt the downloading for a fixed number of tries, as taught by Casagrande, before stopping the downloading until enough time had passed to try again, as disclosed by Chernock and Hendricks. The motivation would be to avoid wasting bandwidth on an area that is having weather trouble (Chernock: column 12, lines 27-28).

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Hendricks as applied to claim 18 above, and further in view of Chernock.

Herz discloses a terminal condition control method according to claim 18, further comprising: a determining step of determining whether or not the result of the statistic process by the statistic processing step meets an operation condition maintained in advance (column 4, lines 31-34; Note: creating a channel for a specific subscriber is interpreted as statistically processing information to meet an operating condition, as the information sent would have to be sent to the headend, processed, and then put up against a matrix to decide which programs to include).

Herz and Hendricks do not disclose an operation executing step for fetching an operation controlled in advance to execute the operation when the operation condition corresponding to the fetched operation is determined to be satisfied in the determining step meets the operation condition.

Chernock discloses an operation executing step of taking out the operation controlled in advance to execute the operation when determination in the determining step meets the operation condition (column 5, lines 38-46).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the method of distributing software, as taught by Chernock, in the conditional system disclosed by Herz and Hendricks. The motivation for combining these two references would have been to have the system be able to provide the information to a specific demographic (people that watch the same programs) (Chernock: column 5, lines 39-42).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS

  
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